law governed the rights of the plaintiff. *Thompson T. & W. Ass'n* v. *McGregor*, 207 Fed. 209 (C. C. A. Sixth Circ.). The result is consistent with the reasoning suggested.

THE SEGREGATION OF THE NEGRO IN SEPARATE RESIDENCE DISTRICTS. — Any attempt to segregate the members of one race from those of another must necessarily carry with it a considerable restraint upon personal liberty. Such a deprivation of liberty is not unconstitutional if fairly within the exercise of the police power.[1] The very conception of police regulations involves a limiting of personal liberty. Accordingly it has been considered proper to require railroads to separate white and negro passengers, provided equal accommodations are supplied for both.[2] The friction resulting from race prejudice where the two races are thrown into close contact fairly justifies such provisions. Since intermarriage is beneficial to neither race, statutes prohibiting such marriages are upheld as tending to advance the health and welfare of the community.[3] Similar considerations of health and order have led to the upholding of statutes providing that white children should attend separate public schools from colored children.[4] In such a case it may be urged that, where a negro is compelled to receive his education and to form all his early associations with other negroes, there is added to mere restraint of liberty an unjust discrimination expressly prohibited by the Fourteenth Amendment; that while the whites lose nothing, even the better type of negro is excluded from his chance to better himself by early association with the higher civilization and culture of the whites. Such arguments, however, have not prevailed.

These considerations are more strongly felt when segregation is carried to greater extremes. In a recent decision the Maryland Court of Appeals was of the opinion that an ordinance does not deprive the negro of the equal protection of the laws which provides that in Baltimore no whites or negroes should thereafter reside in blocks exclusively occupied for residences by the other race. *State* v. *Gurry*, 88 Atl. 546. No discrimination appears on the face of the ordinance, and the Maryland court upheld it on that ground.[5] Where, in the case of segregation in railway cars, there is but a temporary separation, and in the case of the school segregation a separation only during childhood, by the Baltimore ordinance a negro is forever prohibited from residing among the whites and in the better residence districts of the city.[6] It has been asserted, and prob-

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[1] Jacobson *v.* Massachusetts, 197 U. S. 11. See Chicago, B. & Q. R. Co. *v.* McGuire, 219 U. S. 549, 567, 568.

[2] Plessy *v.* Ferguson, 163 U. S. 537.

[3] State *v.* Gibson, 36 Ind. 389.

[4] Roberts *v.* City of Boston, 5 Cush. (Mass.) 198. Lehew *v.* Brummell, 103 Mo. 546. This is probably also true of private schools. Berea College *v.* Kentucky, 211 U. S. 45.

[5] The court concluded that the Baltimore ordinance worked such a deprivation of property rights that it was not reasonable to suppose that the legislature meant to confer upon the city power to pass such an ordinance, and therefore held it invalid on that ground. The expression of opinion as to the validity under the Fourteenth Amendment is therefore a *dictum*, but an important one.

[6] Slaughter-House Cases, 16 Wall. (U. S.) 36; Missouri Pac. Ry. Co. *v.* Humes, 115 U. S. 512; Minneapolis & St. Louis Ry. Co. *v.* Emmons, 149 U. S. 364.

ably with truth, that almost all the better portions of the residence section are occupied exclusively by whites. The negro therefore, however cultivated or successful, must always remain in an inferior social and physical environment. The difference in degree of discrimination from the railway car and school cases is such as to amount practically to a difference in kind. It is true that, under the Fourteenth Amendment, discrimination may be justified on reasonable exercise of the police power,[7] but it is clear that any discrimination on the ground of race alone is arbitrary and unconstitutional. Laundry regulations aimed at the Chinese alone are clearly in conflict with the Amendment.[8] Similarly it would seem that those statutes which discriminate, as regards the suffrage, in favor of the lineal descendants of those who voted in 1866 is in substance a discrimination against the negro, just because of his race and hence unconstitutional.[9] It may be argued that such discrimination as results from the Baltimore ordinance can be justified as an exercise of the police power. This cannot be based on the theory that the negro being more unsanitary affects the health of the white sections. It cannot be contended that because a man is a negro he is therefore unsanitary. Nor can the preserving of realty values in the "white" sections be within the exercise of the police power. The danger of racial intermingling is probably not rendered appreciably greater by residence in the same block. Hence the only plausible ground for justifying the ordinance is the danger of race friction. It is fair to assume that both races are equally at fault in the trouble which arises from race prejudice. It is questionable then, in view of the intent of the Fourteenth Amendment, whether it is possible to consider reasonable a regulation by which a negro, no matter what his individual characteristics, is confined because of his color to an environment rendered inferior to that open to a white man, by reason of the general standards of the negro race and their present status in the community.

Granting that the preserving of order could possibly justify such segregation, and admitting that a feasible method of segregating in an established community without discrimination is impossible,[10] it seems doubtful whether such necessity exists in Baltimore as to fairly bring such regulations within the police power.

TERRITORIAL APPLICATION OF WORKMEN'S COMPENSATION ACTS. — The popularity of the economic principles involved [1] has caused many states to adopt Workmen's Compensation Acts, and makes further enactments probable. It becomes important to inquire whether

[7] Yick Wo *v.* Hopkins, 118 U. S. 356. Where regulations are proper because of the nature of the occupation, they are none the less proper because the Chinese are alone affected. Barbier *v.* Connolly, 113 U. S. 27; Soon Hing *v.* Crowley, 113 U. S. 703.

[8] See 26 HARV. L. REV. 49–53 for a discussion of such statutes as affected by the Fourteenth Amendment.

[9] Were a new city to be plotted, regulations which set apart equally advantageous separate parts of the city for the whites and for the negroes would be less objectionable.

[1] 25 HARV. L. REV. 129, 328.